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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/511,789

06/16/2005

Mark Beaven Harris

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EXAMINER

COOLEY, CHARLES E

ART UNIT

PAPER NUMBER

1723

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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3 MONTHS

01/23/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/511,789

Applicant(s)

HARRIS ET AL.

Examiner

Charles E. Cooley

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 October 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 12-16 is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☒ Claim(s) 11 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 October 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>20041014</u> . | 6) <input type="checkbox"/> Other: _____ |

NON-FINAL OFFICE ACTION

1. This application has been assigned to Technology Center 1700, Art Unit 1723 and the following will apply for this application:

Please direct all written correspondence with the correct application serial number for this application to Art Unit 1723.

Telephone inquiries regarding this application should be directed to the Electronic Business Center (EBC) at <http://www.uspto.gov/ebc/index.html> or 1-866-217-9197 or to the Examiner at (571) 272-1139. All official facsimiles should be transmitted to the centralized fax receiving number 571-273-8300.

Priority

2. Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d). All of the CERTIFIED copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

Information Disclosure Statement

3. Note the attached PTO-1449 form submitted with the Information Disclosure Statement filed 14 OCT 2004.

Drawings

4. Applicant should verify that (1) all reference characters in the drawings are described in the detailed description portion of the specification and (2) all reference

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characters mentioned in the specification are included in the appropriate drawing

Figure(s) as required by 37 CFR 1.84(p)(5).

INFORMATION ON HOW TO EFFECT DRAWING CHANGES

Replacement Drawing Sheets

Drawing changes must be made by presenting replacement figures which incorporate the desired changes and which comply with 37 CFR 1.84. An explanation of the changes made must be presented either in the drawing amendments, or remarks, section of the amendment. Any replacement drawing sheet must be identified in the top margin as "Replacement Sheet" (37 CFR 1.121(d)) and include all of the figures appearing on the immediate prior version of the sheet, even though only one figure may be amended. The figure or figure number of the amended drawing(s) must not be labeled as "amended." If the changes to the drawing figure(s) are not accepted by the examiner, applicant will be notified of any required corrective action in the next Office action. No further drawing submission will be required, unless applicant is notified.

Identifying indicia, if provided, should include the title of the invention, inventor's name, and application number, or docket number (if any) if an application number has not been assigned to the application. If this information is provided, it must be placed on the front of each sheet and centered within the top margin.

Annotated Drawing Sheets

A marked-up copy of any amended drawing figure, including annotations indicating the changes made, may be submitted or required by the examiner. The annotated drawing sheets must be clearly labeled as "Annotated Marked-up Drawings" and accompany the replacement sheets.

Timing of Corrections

Applicant is required to submit acceptable corrected drawings within the time period set in the Office action. See 37 CFR 1.85(a). Failure to take corrective action within the set period will result in ABANDONMENT of the application.

If corrected drawings are required in a Notice of Allowability (PTOL-37), the new drawings **MUST** be filed within the **THREE MONTH** shortened statutory period set for reply in the "Notice of Allowability." Extensions of time may **NOT** be obtained under the provisions of 37 CFR 1.136 for filing the corrected drawings after the mailing of a Notice of Allowability.

Specification

5. The specification has not been checked to the extent necessary to determine the presence of all possible minor errors. Applicant's cooperation is requested in correcting any errors of which applicant may become aware in the specification.

6. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). An abstract on a separate sheet is required. The PCT abstract is not a proper IFW abstract on a separate sheet.

7. The title of the invention is not descriptive. A new title is required that is clearly indicative of the invention to which the claims are directed (MPEP 606.01).

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. **Claims 1-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Brison (US 4,405,998).**

The patent to Brison discloses a homogenizer including a housing 14, 24; a drive mechanism 10 located within said housing; and a cutting element 22 attached to said drive mechanism, wherein in that at least part of said drive mechanism is reversibly movable within said housing (col. 2, lines 46-59 and col. 3, lines 15-17) between a position in which said cutting element is located within said housing (Fig. 1) and a

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position in which the cutting element at least partially projects outside said housing and thereby facilitating cleaning of same (Fig. 2); wherein said housing includes an outer projection 30 with a bearing surface capable of engaging with one or more objects external from the homogenizer to thereby restrain movement of said housing whilst allowing said drive mechanism and cutting element assembly to be movable with respect to said housing; wherein the housing is a substantially tubular cylinder open at a first end (Figs. 1-2); the cutting element 22 can be located at said first end within the volume of the cylinder boundaries (Fig. 1); wherein the housing at said first end includes a plurality of slots and/or apertures 28; wherein the slots/apertures 28 are a series of castellations 26 radially disposed about said first end of the cylinder; wherein the cutting element 22 is formed from one or more blades; wherein the outer projection is an annular flange (the enlarged diameter portion above 14 and below 10 in the Figures).

The subject matter of claims 9-10 is of no patentable consequence, since the claims are considered drawn to the subcombination of the homogenizer only.

Therefore, any claim language drawn to elements outside the scope of said subcombination (such as the external object of vessel) are not deemed positively recited elements of the subcombination. However, the device of Brison is of course capable of being used with a vessel having a circular opening.

10. Claims 1-7 and 9-10 are rejected under 35 U.S.C. 102(b) as being anticipated by Rebordosa et al. (US 6,293,691 B1).

The patent to Rebordosa et al. '691 discloses a homogenizer including a housing 4, 14; a drive mechanism for driving shaft 1 located within said housing; and a cutting element 3 attached to said drive mechanism, wherein in that at least part of said drive mechanism is reversibly movable within said housing (col. 4, lines 55-68) between a position in which said cutting element is located within said housing (Fig. 1) and a position in which the cutting element at least partially projects outside said housing and thereby facilitating cleaning of same (Fig. 2); wherein said housing includes an outer projection 17 with a bearing surface capable of engaging with one or more objects external from the homogenizer to thereby restrain movement of said housing whilst allowing said drive mechanism and cutting element assembly to be movable with respect to said housing; wherein the housing is a substantially tubular cylinder open at a first end (Figs. 1-2); the cutting element 3 can be located at said first end within the volume of the cylinder boundaries (Fig. 1); wherein the housing at said first end includes a plurality of slots and/or apertures (proximate 17 in Figs. 1-2); wherein the slots/apertures are a series of castellations radially disposed about said first end of the cylinder (Figs. 1-2); wherein the cutting element 3 is formed from one or more blades.

The subject matter of claims 9-10 is of no patentable consequence, since the claims are considered drawn to the subcombination of the homogenizer only. Therefore, any claim language drawn to elements outside the scope of said subcombination (such as the external object of vessel) are not deemed positively recited elements of the subcombination. However, the device of Rebordosa et al. '691 is of course capable of being used with a vessel having a circular opening.

Allowable Subject Matter

11. Claim 11 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

12. Claims 12-16 are allowable over the prior art of record.

Conclusion

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The cited prior art discloses hand-held homogenizing devices.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles E. Cooley whose telephone number is (571) 272-1139. The examiner can normally be reached on Mon-Fri. The examiner's supervisor, Wanda Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

A handwritten signature in black ink, appearing to read "Charles" followed by a stylized flourish.

Charles E. Cooley
Primary Examiner
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19 January 2007